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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1766th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 20 July 1999, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Romania (CCPR/C/95/Add.7; HRI/CORE/1/Add.13/Rev.1, CCPR/C/66/Q/ROM/1/Rev.1)

1. At the invitation of the Chairperson, Mr. Diaconescu, Mr. Maxim, Ms. Tarcea, Ms. Bran, Mr. Attila, Mr. Moldovan, Ms. Sandru, Mr. Farcas and Mr. Pacuretu (Romania) took places at the Committee table.

2. The CHAIRPERSON welcomed the Romanian delegation and invited it to introduce the fourth periodic report of Romania (CCPR/C/95/Add.7).

3. Mr. DIACONESCU (Romania) drew the attention of Committee members to the document distributed to them in English only without a symbol and containing additional information supplementing the report, which covered the period 1992-1995 and thus was not up to date on a number of points. Both the report and the above-mentioned document had been drawn up in cooperation with a number of ministries and the Office of the Ombudsman ("People's Advocate" in the Romanian Constitution). Account had also been taken of information communicated by non-governmental human rights organizations.

4. Romania had acceded to all the major international human rights instruments, and implementation of their provisions was facilitated by article 20 of the Romanian Constitution. For Government elected in 1996, strengthening human rights went hand in hand with promoting democracy, good governance and the rule of law. For example, the President of Romania had recently submitted to Parliament a draft national security strategy, in which the protection of citizens was a central element. However, it was important to emphasize the complexity of the on-going reform process in Romania and the multiple challenges which the authorities faced in transforming the country into a democratic society. Although the requisite legal, judicial and institutional framework for promoting and protecting human rights existed, the exercise of those rights continued to encounter a number of obstacles, due essentially to the economic and social costs of transition.

5. With regard to changes during the period covered by the report (CCPR/C/95/Add.7), note should be taken of the improvements in the organization and functioning of the judiciary. Today, all judges of Romanian courts were irremovable, and legislation had been amended to provide explicit guarantees for the independence and impartiality of the courts: in particular, pursuant to Act No. 92/1992, the Ministry of Justice was simply required to ensure the smooth functioning of justice as a public service (see para. 139 of the report). The new rules adopted in 1998 on the Higher Council of the Magistracy gave that body greater powers. The Minister of Justice was only competent to ask the Council to take disciplinary action. The system of military justice had also been reorganized, and the military section of the Supreme Court of Justice had been dismantled. Consequently, all cases were brought before the civil courts at final instance.

6. Training for judges had also been reviewed, and the National Institute of the Magistracy would soon offer more extensive training, notably at a training centre for court clerks and other auxiliary personnel. Starting in September 1999, a diploma from the Institute would be required to enter the judicial profession, which had been made more attractive, legislation on judges' salaries having been amended and the promotion of younger judges to higher courts and to decision-making positions having been encouraged.

7. The creation of the Office of the People's Advocate, in conformity with Act No. 35/1997, was an other important step in consolidating the protection of the rights recognized in the Covenant. Currently, the office was fully operational, with a staff of 70, of whom 40 were responsible for reviewing complaints.

8. One of his Government's is main objectives was protecting the rights of members of the national minorities. Taking into account the Human Rights Committee's recommendations following consideration of Roman's third periodic report (CCPR/C/58/Add.15), as well as recommendations of other organizations, such as the Council of Europe and the OSCE, the Romanian authorities had taken numerous measures to promote the cultural and linguistic identity of minorities and create an atmosphere of tolerance and respect for multiculturalism. In 1997, Romania had become the first State party to the Council of Europe's Framework Convention for the Protection of National Minorities, and it had also signed the European Charter for Regional or Minority Languages.

9. A Department for the Protection of National Minorities had been set up in 1997. It was responsible, inter alia, for drawing up bills, supervising the implementation of national and international norms relating to the protection of minorities, receiving and examining complaints against measures by the local authorities which impeded exercise of the rights of national minorities, and promoting and organizing programmes to develop the cultural, religious and linguistic identity of members of ethnic minorities. The Department was assisted by the Council of National Minorities, a consultative body made up of representatives of national minority organizations. The Department had opened offices in five major cities, and an inter-ministerial committee for national minorities, composed of representatives of 15 ministries and ministerial departments, had been established.

10. A number of legislative amendments in recent years had affected national minorities, notably in the area of education (right to be taught in one's mother tongue, including in universities, etc.). Government decision No. 697/1998 made provision for setting up a public multicultural university. Three recent government orders (Nos. 21/1997, 13/1998 and 112/1998) concerned restitution of immovable property to members of national minorities or their religious institutions, and the Department for the Protection of National Minorities was currently preparing two bills, one on the elimination of discrimination and the other on national minorities. A third bill envisaged introducing bilingual signs in towns and villages and the right to use one's mother tongue in dealings with local authorities. With regard to the participation of members of national minorities in political life, article 59 of the Constitution provided that their organizations were entitled to one seat each in the Chamber of Deputies if they did not obtain enough votes. In the 1996 elections, the national minorities had won 40 seats in the Chamber of Deputies and 11 seats in the Senate, and a large number of seats on local authorities. And for the first time in Romanian history, a party set up on the basis of ethnic considerations (the Democratic Alliance of Hungarians) had joined the ruling coalition.

11. The question of the situation of the Roma minority, which had been the subject of a specific recommendation by the Human Rights Committee, fell within the preview of the National Office for Roma. In order to encourage the involvement of Roma communities in decisions of concern to them, the authorities had granted technical and financial assistance for the establishment of a working group of Roma associations, which cooperated with the Department for the Protection of National Minorities in framing the strategy for protecting the Roma minority in Romania. A joint programme involving the Department and the European Commission focused on improving the situation of the Roma minority and was to receive 2 million Euros in funding as part of the 1999-2000 PHARE Programme. The Department was working on other activities to promote Roma identity in cooperation with the associations concerned and NGOs, as well as several ministries and the Ombudsman's Office organizing cultural events and training courses, publishing books and magazines on the Roma minority, etc.

12. The Romanian authorities were determined to prevent and combat xenophobic and racist behaviour, and to promote a climate of inter-ethnic understanding and multiculturalism. Prosecutors had been

systematically notified of all individual or group manifestations of racism or xenophobia, and proceedings had b :en instituted. Sometimes that had been a slow process because of time-consuming judicial procedures.

13. The authorities had placed special emphasis on the preventive dimension of fighting the dissemination of racist or xenophobic ideas and intolerance, stressing the role of education and training. Numerous projects had been carried out in conjunction with Roma associations, Romanian or international NGOs, and international organizations such as the Council of Europe, the OSCE and the European Union, so as to have a better understanding of the needs and characteristics of the Roma communities, identify and eliminate inter-ethnic tensions, and help the Roma communicate with the police and the media. A number of projects on those questions had been conducted with the financial support of the Romanian National Foundation to coordinate the Youth Campaign against Racism, Anti-Semitism, Xenophobia and Intolerance (RAXI Programme).

14. With regard to the need for "greater control over the police", which the Human Rights Committee had highlighted during consideration of the third periodic report (CCPR/C/58/Add.15), it should be noted that the Minister of the Interior, who was in charge of the police, was a civilian, and his Ministry was monitored by Parliament, the Government and other institutions, such as the Ombudsman's Office and the Public Prosecutor. The NGOs and the media also had a control function, in that they regularly publicized police abuses. Training on national and international norms for the protection of human rights had been made part of professional training for law enforcement officers, including in the police academy, and the Romanian Committee for Human Rights and Humanitarian Law, which reported to the Ministry of the Interior, had organized numerous seminars and round tables on the subject for police officers in several towns.

15. Complaints of police abuse were reported to the military prosecutors responsible for investigating such cases. Between 1996 and June 1999, legal proceedings had been started against 664 police officers; 281 had been brought to court, and administrative penalties had been imposed on 143. A bill had been submitted to amend the Code of Criminal Procedure by transferring jurisdiction for criminal investigations and trials from military prosecutors to the civil courts. Lastly, the military section of the Supreme Court had been abolished.

16. Responding to the concerns expressed by the Committee and other international organizations about a number of restrictions on exercise of freedom of expression, in 1998 the Ministry of Justice had submitted to Parliament a bill to report article 238 of the Penal Code, relating to the defamation of public authorities, and amend articles 205 and 206 so that journalists could report information without interference by the authorities. Parliament had returned the bill for a more detailed wording. The Ministry of Justice was currently preparing a new draft on those issues, which it would submit to Parliament at its next session.

17. As gender equality was a prerequisite for the democratic development of society, the Romanian authorities had drafted a national plan of action for women, set up machinery for the advancement of women and carried out various projects in cooperation with international organizations. Although the principle of non-discrimination on grounds of sex was rooted in Romanian legislation, the Government had taken additional steps to develop it further. For example, two major bills had been submitted to Parliament, one on equal opportunities for men and women, which guaranteed equal treatment in all areas and required the authorities to work towards that goal, and the other on paternity leave, which strengthened the principle of responsibility–sharing in the family and society.

18. In 1996, a pilot centre for assisting and protecting of victims of family violence had been set up as part of government policy to combat violence in the home. In 1998, a family information and advice centre and an aid centre for unemployed women had been opened and a programme of measures on women's health launched.

19. But de facto inequalities persisted, due primarily to the difficulties of the transition period and to traditional ways of thinking, especially with regard to women's representation in politics. There were only two women senators (for 143 seats) and 24 deputies (for 328 seats) in Parliament. A number of women were State Secretaries, but there was no woman minister. It had not been possible to introduce affirmative-action measures, because public opinion was against the quota system.

20. The Committee had also expressed concern about the increase in infant mortality. The situation had improved, the infant mortality rate having declined from 23.9 per thousand in 1994 to 20.5 per thousand in 1998. Romania's programme of cooperation with UNICEF for 2000 to 2004 contained a number of measures to improve the health of women and children.

21. Generally speaking, his Government was making every effort to promote and protect human rights, in cooperation with the United Nations, the Council of Europe, other international organizations, and NGOs, but all the major forces of civil society must play an increasingly active role in formulating and implementing human rights policies and programmes.

22. The CHAIRPERSON thanked Mr. Diaconescu for his introductory statement and invited the Romanian delegation to reply to questions 1 to 12 of the list of issues (CCPR/C/66/Q/ROM/1/Rev.1).

23. Ms. TARCEA (Romania) replying to question 1, said that, in accordance with the Romanian Constitution, international treaties which had been ratified by Parliament were part of domestic law (art. 11, para. 2) and that the provisions of international human rights instruments to which Romania was a party prevailed in the event of conflict with domestic law (art. 20).

24. Thus, the provisions of the Covenant were part and parcel of domestic law, and took precedence. They could also be directly invoked in the courts, whose decisions often cited supporting articles of the Covenant. That was the case in particular with the Constitutional Court, whose decisions were binding on the lower courts.

25. Mr. MOLDOVAN (Romania), replying to question 2, said that the Office of the Ombudsman was a recent institution whose creation had been provided for in the text of the new Constitution adopted in December 1991 as a way of guaranteeing protection of the rights and fundamental freedoms of citizens. Chapter IV of Title II of the Constitution defined the conditions for appointing the Ombudsman and his role and powers, and stated that the Office's organization and operation would be regulated by an implementing act, which had not been passed until March 1997; the first Ombudsman had then been elected by the Senate in June of that year. Pursuant to article 1 of the implementing act, the Ombudsman was responsible for defending the rights and freedoms of citizens in their relations with the authorities, he was elected by the Senate for a period of four years and could be re-elected once.

26. By law, there were a number of restrictions on the Ombudsman's activity. Acts of Parliament, the President, the Constitutional Court, the Legislative Council and the judiciary were not within his jurisdiction. He was empowered to receive written complaints from citizens. He took action by conducting investigations, holding hearings, and gathering information from individuals and public bodies. He had free access to all documents, including confidential files, and direct access to the Prosecutor General and the Higher Council of the Magistracy. He could propose legal amendments, formulate recommendations for the authorities and enjoin them to comply strictly with legislation. If the authorities committed an error, he could require the body in question to change or revoke a decision and restore the injured person's rights. The authorities concerned had 30 days to respond. If he did received no reply, the Ombudsman could bring the matter before the competent supervisory body and then before the Government and, in the last instance, Parliament. The Ombudsman was entirely independent of the authorities, but did not replace them. The latter were required to provide him with any information he might need. The only body which monitored his activities was Parliament, to which he must report every year.

27. Complaints were examined by a staff of 40 persons with legal training, each of whom was assigned to one of four departments covering all aspects of Romania's political, economic and social activity. By and large, the complaints received by the Ombudsman's Office concerned the restitution of land or immovable property (only applications by persons who had exhausted all remedies were admissible), pensions and social benefits, the rights of former political prisoners, protection of disabled persons and children in need, the protection of employees from unlawful group dismissals, consumer rights, activities of the police, the prison system, and the rights of asylum-seekers and refugees. The cases considered by the Ombudsman were submitted to him directly by individuals, deputies and senators on behalf of persons in their electoral district or the Ministry of Justice, the Supreme Court, the Constitutional Court, the President's office or the Government, which in general merely forwarded complaints addressed to them by mistake. National radio, the press and NGOs also served as intermediaries between individuals and the Ombudsman's Office.

28. The number of complaints received had risen from 1,168 in 1997 to 3,000 in the first months of 1999. Most the complaints received (no less than 90 per cent in 1997) concerned questions for which the Ombudsman was not competent. Their authors usually complained of the administration of justice, trials which were too slow or too costly, or judicial decisions which they regarded as unfair. The fact that the Ombudsman was designated in the Constitution as the People's Advocate had even led some people to ask him to represent them in civil cases. Most of the complaints found to be inadmissible (69 per cent) originated from urban areas. All told, in 1997 and 1998, the Ombudsman had examined 495 cases and taken a decision on 235 of them. In 92 cases, he had decided in the complainant's favour; in 13, he had made recommendations to the authorities; and in 129, he had called upon them to comply with the law.

29. The number of complaints had continued to rise, 381 cases having been examined in the first five months of 1999 alone. In more than 200 of those cases, the Ombudsman had concluded that the authority concerned had been at fault, and in more than 100 others, he had criticized the authority for not replying to the complainant. Among the authorities most reluctant to reply were bodies in charge of returning immovable property and land at the district level and the Mayor of Bucharest, whereas the Ministry of Defence, the Ministry of the Interior and the Ministry of Justice, for example, had so far been extremely cooperative.

30. Ms. TARCEA (Romania), replying to question 3 of the list of issues, said that the judiciary was made up of the courts, the State Prosecutor's Office, the prosecutors and the Higher Council of the Magistracy. It was completely independent of the executive. Judges were appointed by the President of the Republic. As from October 1996, they could not be removed except by decision of the Higher Council. Pursuant to Act No. 142/1997, the Ministry of Justice no longer had any role other than that of observer, the judicial apparatus being supervised by inspectors of the Court of Appeal who, in cases of violation of the rules by a judge, informed the Ministry of Justice, which could request the Higher Council to start disciplinary proceedings. The manner in which a judge conducted a trial was not subject to such proceedings. Of the 20 disciplinary proceedings initiated between 1996 and 13 June 1999, only 5 had been brought to a successful conclusion. The decisions of the Higher Council were not final, because a judge who had been sanctioned could appeal to the Supreme Court.

31. As to the training of judges in human rights questions, it should be pointed out that human rights protection was one of the subjects taught in law schools. A legal service training institute had been created in 1996 to teach future judges about international human rights norms. Romanian judges could also take training courses as part of an international programme to strengthen the implementation of global and European human rights instruments. The departments of the Ministry of Justice had produced 10 human rights studies which would be widely distributed among judges, prosecutors, members of Parliament and police forces. Those studies contained a theoretical introduction and a Romanian translation of the main decisions of the European Court of Human Rights.

32. Ms. SANDRU (Romania), replying to question 4 of the list of issues, said that gender equality was one of the main concerns of the Romanian authorities as part of the general process of democratization of society. Although great progress had been made towards de jure equality, much remained to be done about de facto equality. Following the commitments entered into by her Government at the Fourth World Conference on Women in Beijing in 1995, an equal-opportunity agency had been set up and subsequently drafted a national plan of action based on the Beijing Programme of Action. An equal-opportunity sub-committee had also been set up in Parliament in April 1997 to disseminate information on international resolutions and norms concerning women and speed up the process of implementing the principle of gender equality. In 1998, a department for the protection of children, women and the family had been established within the Ombudsman's Office.

33. With regard to the legislative framework for promoting gender equality, she said that articles 11 and 20 of the Constitution had greatly facilitated the incorporation into national legislation and implementation of the provisions of various international instruments, such as the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child and the European Convention on Human Rights.

34. Various chapters of the Labour Code were devoted to the employment of women and employer/employee relations, particularly during pregnancy. In order to enable women to enjoy the same employment rights as men, Act No. 120/1997 allowed them to take special leave in order to care for their children under two years of age, in addition to the 102 days of maternity leave to which they were entitled. Another major provision of the same Act, (art. 2), provided that the duration of the special leave in question was taken into account in calculating seniority. In order to strengthen the principle that men and women should share responsibilities, the Act stipulated, in article 6, that both parents were eligible for such leave. The Romanian authorities had also taken measures to heighten women's awareness of their rights and inform them of ways available to them to ensure that those rights were respected. For example, in 1998 a practical guide on the rights of women during pregnancy had been published with the cooperation of the United Nations Population Fund.

35. In addition to legislation already in force, two bills were being examined in Parliament: one, which concerned equal opportunities for men and women, expressly required the authorities to take the necessary measures to ensure gender parity. It contained the first definition in Romanian law of direct and indirect sexual discrimination and prohibited all discrimination in employment and occupational training, and also sexual harassment at the workplace. The other bill, on parental leave, enshrined the principle of parental sharing of responsibilities.

36. Reference should also be made to the strategy formulated by the authorities to make the various concerns of women an integral part of national policy. That included the Plan of Action for Women for 1999-2000, which aimed to set up an inter-ministerial consultative committee for the promotion of equality in all areas of society, provide the main national institutions with an anti-discrimination service, help women gain access to key posts and combat violence in the home.

37. The profound changes in women's lives and the persisting inequalities clearly emerged from the most recent statistics. In 1997, women had accounted for 47.2 per cent of the working population. A majority of pupils in secondary schools had been girls. A total of 24.4 per cent of women and 21 per cent of men had gone on to higher education. Despite their high qualifications, more women were unemployed than men: 9.1 per cent as against 8.8 per cent of the total population in 1997. That same year, 26 per cent of women had held high-level positions in the private or public sector. Women had been strongly represented in such areas as health care and social protection (75.6 per cent of employees), education (67.8 per cent), and financial services and banks (69.5 per cent), a sector in which salaries were relatively high. Unfortunately, women were still under-represented in the political sphere: only 5.3 per cent of the members of Parliament were women. As to the possibility of taking measures to alleviate that situation, the quota system had proved

ineffective because of the lack of enthusiasm among the general public, and among, women in particular, and doubts due to its use for political ends under the Ceaucescu regime.

38. Replying to question 5, she said that Romanian legislation did not contain any provision expressly covering trafficking in women. Prostitution, the exploitation of women and slavery were prohibited by the Penal Code. Romania was also party to a number of international instruments aimed at combating those practices, such as the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The growing concern about trafficking in women and the activities of international networks engaging in that practice had been highlighted in a campaign conducted by a number of public bodies, in particular the Ministry of the Interior and the Ministry of Education, as well as NGOs specializing in assistance to the victims of sexual exploitation. The Ministry of the Interior was playing an active part in intergovernmental cooperation trafficking in human beings. In order to heighten awareness of the problem among young people, the Ministry of Education had included in the school syllabus such subjects as education in a spirit of tolerance and education in non-violent behaviour. The two ministries also organized regular joint round-table discussions on preventing that evil practice. Lastly, she referred to the important contribution of the media to the consciousness-raising the efforts of the authorities in that area.

39. Turning to question 6 of the list of issues, she drew attention to the legislation aimed at combating violence in the home. The Penal Code provided for sanctions against anyone who violated the life, physical integrity or health of others (arts. 180-184), committed assault or caused physical injury (arts. 197-204), committed sexual offences (arts. 304-307) or violated social coexistence or the equilibrium of the family.

40. Violence in the home had two main causes: alcoholism and certain forms of behaviour, traditions and ways of thinking which assimilated women to inferior beings. Owing to the sense of shame and guilt which were inculcated in women, victims were reluctant to lodge a complaint. That was why the phenomenon was hidden and there were few statistics on the question. Law-enforcement bodies could not intervene unless there was a complaint. To remedy that situation, a bill had been prepared to supplement the Penal Code and the Code of Criminal Procedure, its objectives being to increase penalties for violent offences in general and violence in the home and sexual violence in particular, and to ensure that legal action could be taken even in the absence of a complaint. It was also worth noting that, in some cases, violence in the home fell under Act No. 61/1991 relating to violations of social coexistence and public order.

41. As a means of strengthening institutional and administrative machinery to combat violence in the home, in 1996 the authorities had set up, in cooperation with a number of NGOs involved with the issue, a pilot centre to assist the victims of that practice, the goal being to provide the women concerned with social and medical assistance, legal counselling and rehabilitation services. In 1998, the authorities had also established an information and consultation centre on family affairs to promote the stability of couples and provide social assistance and psycho-therapeutic services to families in difficulty. The Ministry of Education was carrying out a number of programmes to familiarize police officers in school syllabuses with the various problems posed by violence in the home, and had included courses on the prevention of violence, including violence in the family.

42. Ms. TARCEA (Romania) said that in 1996 article 197 of the Penal Code had been amended to make marital rape a punishable offence. However, the criminal responsibility of the perpetrator was annulled if the victim withdrew her complaint, which often happened in cases of marital rape. Article 197, paragraph 3, of the Code also provided that a rapist was not punishable if he married his victim before the final judgement in the case. Legislation had set the legal age of marriage at 18 for men and 16 for women for biological reasons, puberty starting earlier for girls than for boys. However, she assured the Committee that, if that was interpreted as a form of discrimination against women, Romania would take the necessary measures to remedy the situation.

43. Ms. SANDRU (Romania), replying to question 8, said that the Ministry of the Interior, which was headed by a civilian, was responsible for the police, the gendarmerie, military firemen, and the Passports, Foreigners and Immigration Department. Each of those divisions had a mechanism for monitoring abuses. For example, the 1,500 community police officers were under the supervision of the General Police Inspection Service, which had specialized personnel. Anyone who thought that he or she had been the victim of police brutality could lodge a complaint. Although in the period 1990-1994 a number of complaints about the improper use or illegal possession of firearms had not been acted on, she assured the Committee that that had not been the case for the period 1994-1999. When a complaint was lodged, the case was automatically sent to the prosecutor's office, and administrative and disciplinary measures were taken against accused, police officers even before a verdict was handed down. However, the constitutional principles of the separation of powers and the presumption of innocence prevented information from being obtained on the course of the case during the investigation.

44. The Ministry of the Interior was attaching increased importance to the in-service training of police officers. The Romanian Committee for Human Rights and Humanitarian Law was currently carrying out its third human rights training programme for the entire staff of the Ministry of the Interior; the programme had been prepared taking into account the recommendations of the United Nations Human Rights Committee and the Committee against Torture. The Ministry of the Interior had also published documents in conjunction with the Centre for Human Rights.

45. Turning to question 9, she said that all detainees had the right to be defended by a lawyer, who was officially appointed if the detainee had not chosen one. The signature of the lawyer in the case file testified that the right of defence had been respected. The defence counsel could take part in any action, such as house searches or reconstitutions. Pursuant to Act No. 26/1994, the police were empowered to make arrests, which were limited to 24 hours and must be authorized by an order approved by their hierarchical superior. Within 24 hours, the police could ask the public prosecutor to issue a provisional arrest warrant (custody). The person concerned could be accused or charged during provisional (pre-trial) detention, which could last a maximum of 5-30 days, depending on the case.

46. Ms. TARCEA (Romania) noted that, in accordance with article 9 of the Covenant, anyone arrested or detained on a criminal charge must be brought before an officer authorized by law to exercise judicial power. As the public prosecutor was authorized by article 1 of Act No. 92/1992 to exercise judicial power, his authority to place persons in provisional (pre-trial) detention was thus not incompatible with the Covenant. The extension of detention could only be ordered by a judge. A bill had been submitted providing for the appointment of examining magistrates, who would then have sole authority to order arrest and detention.

47. She recalled that the police could keep a person under arrest for no more than 24 hours. The right of defence also applied during that period. If the detainee could not afford the services of a lawyer, those services were provided free of charge. In a decision of 14 July 1998, the Constitutional Court had declared that police officers must inform detainees of their rights.

48. Of a total prison population of about 45,000, some 5,440 were in pre-trial detention. The duration of pre-trial detention varied according to the complexity of the case, but averaged about one year. Several measures had been taken to resolve the serious problem of prison overcrowding. A new prison had been built in 1998, and Act No. 82/1992 had provided for the possibility of converting a prison sentence into a sentence of community service work; those measures had led to a reduction in the prison population of about 10 per cent. In view of financial constraints, however, it was impossible to solve the problem completely.

49. The CHAIRPERSON thanked the Romanian delegation and invited the members of the Committee to ask their questions.

50. Mr. WIERUSZEWSKI said that, notwithstanding the difficulties encountered by the State party during the current period of transition, he was concerned about the fact that the executive branch could exercise powers which were normally confined to the legislature. It was his understanding that it had done so on a number of occasions, including after 1996, and he wondered whether that was still the case and, if so, how often that occurred. He had also noted that the Constitution spoke of "citizens", for example in article 16, which excluded, the many refugees living on Romanian soil, among others; he asked whether it was planned to amend that wording. He also inquired whether the very alarming figures given in paragraph 131 of the report on the proportion of vacant posts in the judicial system (30 per cent) were still valid. Lastly, he had learned through outside sources about two bills which might, in his view, constitute serious threats to individual freedoms and to which the delegation had made no reference: a bill on national security and a bill on Security of State secrets and professional secrecy. He asked the delegation to provide details on the content of those bills, indicate the stage they had reached and describe civilian supervision of the intelligence services.

51. Mr. LALLAH asked whether the Constitution or the Covenant took precedence in the event of conflict between them. He noted that there was incompatibility between the Covenant and article 35.2 of the Constitution, which restricted the right to be elected to persons over 23 years of age. Had the Constitutional Court already had occasion to take a decision on such cases of incompatibility? He also sought further information on the military courts and their powers, and regretted that the delegation had not answered question 8 (c) of the list of issues. Similarly, he was surprised at the title "Head of the Ministry of the Interior Legal Directorate" in the list of members of the delegation. Did that mean that the person concerned was a member of the armed forces and that such persons could hold political office?

52. On the question of the impunity of police officers who had committed acts of brutality, rather than make a long speech he would circulate a copy of a report by the European Roma Rights Centre. He disagreed with Romania's interpretation of article 9, paragraph 3, of the Covenant: a prosecutor was not an officer authorized to exercise judicial power. He was pleased that the State party planned to amend its legislation in order to ensure that only judges had the right to order detention and encouraged it to do so as quickly as possible. He also asked whether detainees were held in the same places of detention as convicted prisoners and whether Romanian legislation allowed for their release on bail or conditional release.

53. Ms. GAITÁN DE POMBO welcomed the State party's veritable democratic leap forward since 1992 and, in particular, since 1996. However, she shared Mr. Lallah's concerns about the powers of the military judicial authorities. In particular, she did not understand why it was stated in paragraph 58 of the report that, in the light of the General Comments adopted by the Committee, investigation of allegations of ill-treatment by police or prison staff fell within the jurisdiction of the military prosecution services. She would also like to know the exact nature of the training provided to police personnel as part of the programme of the Romanian Committee for Human Rights and Humanitarian Law (report, para. 62). Was that purely theoretical training on international norms or did it also include a more practical part?

54. Ms. CHANET, said that she was participating for the third time in the consideration of a periodic report from Romania and pleased that the Committee had renewed contact with the State party under such different conditions. Times had changed greatly since 1992, and Romania was facing quite an awesome task. The fourth periodic report, which had been drafted in spring 1996, was already partly outdated; hence the distribution by the delegation of a document without a symbol containing additional information, which unfortunately had not been circulated in English until the day before the consideration of the report.

55. Her first question concerned the status of the Covenant in Romania's legal system, which had been clearly set out in article 20 of the Constitution: the Covenant had an intermediate value between the law and the Constitution. Like Mr. Lallah, she would like to know what happened in the event of conflict between the Constitution and the Covenant. She had not seen in the Romanian Constitution any right which was at variance with those set out in the Covenant, but had noticed a number of gaps. Although some of the rights

protected by the Covenant were not included in the Constitution, she deduced from article 20.1 of the latter that the rights set out in the Covenant applied. If Romanian law was at variance with the provisions of the Covenant, it must be brought into line with them. The problem which concerned her was the fact that a Romanian citizen must go before the Constitutional Court to resolve any conflict between the law and the Covenant. Consequently, although the Covenant took precedence over domestic legislation, a degree of legal uncertainty remained because it was necessary to go to court to settle the question; that uncertainty was made greater by the rather vague wording of article 49 of the Constitution, according to which the exercise of certain rights could only be restricted by the law. As that could also be done by the Covenant and restrictions allowed by the Covenant did not necessarily correspond to those authorized by Romanian law, Romania should introduce greater consistency in the hierarchy of norms in order to avoid imbalances and the need to resort to the courts.

56. She agreed with Mr. Lallah and Ms. Gaitán de Pombo about the military courts and would like to know the exact scope of the relevant reform.

57. Her second question concerned article 23 of the Constitution and the rules of the Code of Criminal Procedure, and also a decision by the Constitutional Court concerning the arrest of a suspect by the police, which could last for 24 hours. In a decision of 14 July 1998, the Constitutional Court had found an inconsistency in the treatment of an arrested person and an accused person owing to the failure to comply with the obligation to inform the arrested person of the charges at the time of arrest. As the Court had decided that arrests by the police should meet the requirement under article 9 of the Covenant, she would like to know about the other obligations set out in that article, i.e. what the status of the arrested person was during the 24 hours in question; was he held incommunicado, or could have contacts with the outside? when did the lawyer arrive (as soon as the arrest took place or when it was decided to detain the person)? And in what circumstances could a doctor intervene to check the state of health of the detainee before and after interrogation, regardless of whether or not he was ill (see para. 58 of the report)?

58. She would like to know who ordered a person to be placed in detention: pursuant to the European Convention on Human Rights, it was a judge or magistrate with judicial authority, and under the Covenant, a judge or another officer authorized to exercise judicial power (art. 9). The Committee had sometimes been more demanding than the Covenant in some of its decisions, saying that it must be a court. That also seemed to be the approach taken by the Romanian authorities, who contemplated transferring the power to place a person in detention from the prosecutor to a judge, who offered judicial guarantees. The Supreme Court had also ruled that the detention order issued by the prosecutor could not be appealed before a higher prosecutor. She would like to know how the Romanian authorities planned the transfer of power from the prosecutor to the judge with regard to placement in detention.

59. Her last question concerned the maximum period of 30 days under the Constitution for pre-trial detention, which could be extended and, was apparently extended very often. In a decision, the Supreme Court had said that the 30-day period was not left to the discretion of the prosecutor when the person was brought to court. But if the arrested person had not yet been brought to court, by how much could the 30-day period be extended? Was there a maximum, or could it be extended indefinitely?

60. Ms. EVATT thanked the State party for submitting a detailed report in which it sought to reply to the questions asked and provide information requested by the Committee during consideration of the third periodic report. She also appreciated the additional information forwarded in writing to the members of the Committee to update the fourth periodic report.

61. One question of concern to her was the compatibility of Romanian laws with the Covenant and the Constitution. In a decision regarding a case of pre-trial detention, the Romanian Constitutional Court had found a law to be incompatible with the rights set out in the Constitution and the Covenant. She would like to know what the effect of such a decision was on the subsequent implementation of that law. Did the

decision amend or abrogate it, or must the law be replaced? Given the number of Romanian laws which might prove to be incompatible with the Constitution or the Covenant, had Romania decided to review all legislation which might be incompatible with the two instruments? Did the Ombudsman People's Advocate or the Legislative Council play a role in that connection?

62. Her second question concerned the judiciary and judicial organization. Pursuant to article 71 of the Organization of Justice Act, members of the Higher Council of the Magistracy were elected by the Chamber of Deputies and the Senate (report, para. 125), but she had understood that, following an amendment, they could be appointed by the Ministry of Justice. She sought clarification on that point. She would also like to know the proportion of trainees holding of judges' posts, what exactly the status of a trainee was, and how long a person remained a trainee. She asked those questions because some judges had not been confirmed in office, and many of them were reported to have resigned because of their low salaries and heavy workload. Precisely what measures had been taken to deal with that situation?

63. The third area of concern had to do with the rights of women and gender discrimination. The delegation had given a wealth of information on what was being done in that area. However, she was surprised that, despite such a high percentage of women working in certain professions and such a high proportion of girls and women studying, including in higher education, there were so few women occupying executive posts or seats in Parliament. She would like to know about the new bills concerning sexual harassment and the measures taken to combat violence in the home. Was there a law or a bill which enabled women to request a court order imposing certain restrictions on a violent partner in order to protect them against any interference on his part or a law which prevented the partner from using violence? It was preferable to take preventive action rather than leave matters to the Penal Code, which took only effect after the fact. The delegation had spoken of the unpopularity of quotas for women, but there were other ways of combating discrimination, notably by introducing a single age for marriage that applied to both sexes.

64. Question 8 (b) of the list was a subject of great concern to her; she noted that there had been numerous allegations of police brutality. She was worried at the fact that detainees who complained of police ill-treatment must turn to a prosecutor and then appeal the latter's decision to a higher prosecutor (military court). If the appeal was rejected, the victim did not have any further recourse. Yet the Constitutional Court had found that everyone must be able to have access to the courts. Did a person who had been the victim of police violence to have access to a court, or must he or she go before the Constitutional Court?

65. With regard to custody (police detention), she referred to the Romanian practice whereby a police officer could take a person to the police station. What law authorized that practice? A person could be kept in custody for 24 hours by the police before being brought before the authorities; she wondered whether that was in conformity with article 9. Lastly, she was concerned about another Romanian practice, that of keeping minors suspected of involvement in a criminal offence in detention in re-education centres for up to 30 days without a court order or charges. Was that compatible with article 9 of the Covenant?

66. Mr. SCHEININ said that the consideration of Romania's fourth periodic report was particularly timely in the context of a dynamic situation characterized by favourable trends in the area of human rights. The fact nevertheless remained that the Committee needed to devote its attention to a number of problems, some of which had already been mentioned by other speakers, first of all the relationship between the Constitution and the Covenant. In that connection, he welcomed article 20 of the Constitution, which was a very detailed provision on the effects of an international human rights treaty: it established the interpretative effect of the international human rights norms on the application of the Constitution itself and the primacy of such treaties over internal law.

67. His questions primarily concerned question 8 of the list of issues. Mr. Lallah had already referred to the report of the European Roma Rights Centre, which, like several other NGOs, reported repeated violations

by the police, who committed acts of brutality and violence extending to the use of firearms against Roma adults or even teenagers caught committing minor offences. Such use of firearms had in some cases caused fatalities; that constituted a violation of article 6 of the Covenant, which protected the right to life. In any event, the use of firearms could be tolerated only against armed individuals and in cases of immediate danger to the lives of others.

68. Several NGOs had also mentioned police brutality, not only against Roma, but also against groups such as teenagers, homosexuals or persons suspected of committing crimes under article 200 of the Penal Code. Although training was an important means of combating police brutality, there was also a need for more effective legislation on the use of firearms to completely prohibit violence against persons under arrest.

69. In that connection, he would like to know the number of tried cases involving police officers, the length of the proceedings, the acts of which police officers had been found guilty and the sentences imposed. In his opinion, that would be more illuminating than the number of cases under way.

70. There had been many references to the links between the civilian and military authorities and between prosecutors and judges. Clearly, a distinction should be drawn between the military courts and the courts responsible for trying civilians and civil servants who had committed criminal acts. A clearer distinction must also be drawn between the duties of a judge and those of a prosecutor. It was perhaps feasible to entrust prosecutors with responsibility for exercising judicial power, but that did not generally prove successful in practice, because of the very structured organization of those professions and the risk of a conflict of interests which might lead to a violation of the right to a fair trial. In exceptional cases and as a provisional measure, consideration might be given to entrusting judicial power to prosecutors, provided that the same person did not perform the two functions in the same case.

71. The additional information document distributed by the Romanian delegation provided clarification, under the heading "Article 17", about a law which prohibited the interception of telephone, telegraph or other communications. He would like to know whether a decision by a prosecutor to authorize telephone-tapping was subject to judicial monitoring. In fact, the text of the law reproduced showed that the decision was taken by a prosecutor, who was, as it were the adversary of the person under surveillance, and under suspicion. For there to be a certain degree of judicial independence, it was essential that that decision should be subject to the supervision of a judge or a court.

72. Mr. BHAGWATI observed that, for a country in the middle of transition from dictatorship to democracy, Romania had made remarkable progress in the area of human rights, acquiring a new Constitution and a new Organization of Justice Act. The additional information provided in writing was clear and useful, and constituted a necessary update of the report, which had been prepared in 1996.

73. He would like to know whether the Ombudsman/People's Advocate could act on his own initiative without being asked to do so, whether he could initiate judicial proceedings when he found that his recommendations had not been accepted, and whether he had authority to take legal action and to request an appropriate judicial order. He would also like to know whether Romania planned to review its legislation from the standpoint of compatibility with the Covenant. In addition, in connection with paragraph 139 of the report, which related to the amendment of article 19 of the Organization of Justice Act, what was meant by the words: "the Minister shall be apprised by inspectors-general of the Ministry of Justice ranking as magistrates"? Were they Ministry officials or magistrates? That supervision of the activities of judges of courts of first instance, courts of second instance and appeal courts was exercised by inspectors-general of the Ministry of Justice did not appear to be consistent with the principle of judicial independence.

74. In its introduction, the Romanian delegation had said that in the course of their training future judges received the text of decisions of the European Court of Justice. What was the situation with regard to decisions of the Human Rights Committee?

75. He would welcome information on the circumstances in which the executive had issued emergency decrees, because there seemed to be about 30 of them which had been issued even during parliamentary sessions and had not been ratified by Parliament. Did not such practices weaken the role of Parliament and Romania's democratic structures?

76. In connection with the magistrature and members of the judicial profession who had served during the dictatorship, he asked whether efforts were being made to change the attitude and outlook of judges who had known that regime. In addition, because of the poor remuneration of judges, the profession did not attract the best candidates. What measures were being taken to improve conditions for the exercise of the judicial profession? What training was envisaged for judges in order to ensure that they gained a better knowledge of human rights standards and gave effect to the Covenant in their judgements? Was there any form of legal aid for needy persons who came before the courts?

77. Mr. ANDO welcomed the fact that Romania had done a great deal to give effect to the recommendations made by the Committee after its consideration of the third periodic report. However, questions arose about the links between the Ministry of the Interior and the judiciary, the competence of the military courts to try police officers, and the links between the military and civil courts in the judicial system.

78. Referring to the way in which Romania perceived relations between the Constitution and the Covenant, he said that, in accordance with article 49 of the Constitution, "The restriction (on the exercise of certain rights or freedoms) shall be in proportion to the situation that determined it and may not be prejudicial the existence of the respective right or freedom" (report, para. 15). He felt that that wording was vague, whereas the Covenant enunciated precise reasons that might justify restrictions on the rights it protected. Article 49 of the Constitution also provided that "The exercise of certain rights on freedoms may be restricted only by law". In that case, there arose the problem of the possible discrepancy between the content of Romanian law and the provisions of the Covenant. The specific circumstances in which the exercise of certain rights and freedoms provided for in the Constitution might be limited were listed in paragraph 16 of the report, where mention was made of article 30 of the Constitution relating to freedom of expression (Covenant, art. 19), from the standpoint of defamation and invasion of privacy. He was not certain that the provisions of the Constitution corresponded exactly to those of article 19 of the Covenant. The same remark applied to article 31 of the Constitution, referred to in paragraph 16 (e) of the report. Article 37 of the Constitution banned "secret associations": he would like to know what that phrase meant. Generally speaking, he hoped that the State party would verify the compatibility of all its legislation, including the Constitution, with the provisions of the Covenant.

79. Mr. KRETZMER asked a number of questions relating to the implementation of article 7 of the Covenant and the problem of torture. First, in connection with the possibility for a person who had suffered police brutality during custody to initiate civil proceedings, he noted that, in paragraph 58 of the report, it was stated that "presumed of victims have access to judicial remedies, including the right of appeal regarding the penal aspect of the proceedings, and are also entitled to damages for material and moral injuries sustained". Was criminal indemnity action subject to the initiation of criminal proceedings by the public prosecutor or could a private individual initiate proceedings before a civil court even in the absence of any criminal action?

80. Secondly, he was perplexed by the content of paragraph 59 of the report. It was stated that, if the accused or the witness retracted statements made during the criminal proceedings and affirmed that they had been obtained under duress or by threats, judicial practice revealed that the initial statements were used only if, corroborating other evidence taken during the court investigation, they provided indications of the way in which the act which was the subject of the trial had been committed. From that he concluded that statements which might have been made under duress, i.e. and perhaps under torture, were inadmissible, automatically ruled, that they could be used as evidence and that, if they were corroborated by other testimony, a person could be found guilty on the basis of such statements. That was not compatible with article 7 of the

Covenant and he would welcome clarification. He would also like to know whose responsibility it was to prove that a statement had been made under duress.

81. The CHAIRPERSON said that the Romanian delegation would reply to the oral questions at the following meeting.

The meeting rose at 1 p.m.